Filed 4/7/20 P. v. Guinto CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RONALD DAVID GUINTO, Defendant and Appellant.	A151356 (Contra Costa County Super. Ct. No. 05-151953-7)

Defendant Ronald Guinto was convicted of 87 counts of lewd and lascivious conduct and related offenses arising from his sexual abuse of multiple young victims. On appeal, defendant challenges about half of his convictions; he contends there was insufficient evidence to support 22 counts of aggravated lewd conduct with a child under age 14 (Pen. Code,[1] § 288, subd. (b)(1)) and 22 counts of kidnapping for child molestation (§ 207, subd. (b)). Defendant also challenges the restitution awards to the victims. We affirm.

[1] Further undesignated statutory references are to the Penal Code.

BACKGROUND

Defendant taught sixth grade math and science at Making Waves Academy, a middle school in Richmond. He also operated Camp Epic, a purported "outdoor leadership" camp independent of the middle school.

According to defendant, Camp Epic was modeled on the Boy Scouts and involved weekly meetings and monthly outings that were either camping trips or day trips. He promoted the camp through fliers distributed to local schools, school assemblies, and presentations to parents. Defendant talked about his camp to his students, and in his sixth-grade classroom, he displayed photographs of camp activities, scouting neckerchiefs, and a poster with Camp Epic's logo. Most camp participants were students at Making Waves Academy, and more than one middle school student who joined Camp Epic described defendant as "a cool teacher."

In a 90-count second amended information, the District Attorney of Contra Costa County charged Guinto with multiple offenses related to sexual abuse of 13 middle school boys, most of whom had participated in Camp Epic.

Jury trial began on September 30, 2016. The jury found Guinto guilty of 87 counts and deadlocked on three counts, which were dismissed.

Although he was convicted of crimes against 13 victims, defendant challenges the sufficiency of the evidence of only certain offenses related to three victims, identified at trial as John Doe 1, John Doe 2, and John Doe 7. Our summary of the evidence therefore focuses on these three victims.

John Doe 1

In 2012, John Doe 1 (Doe 1) (born in 2001) was in sixth grade at Making Waves Academy. John Doe 2 (Doe 2) was his best friend. Doe 1 became interested in Camp Epic because "all [his] friends were joining." Defendant was not Doe 1's teacher, but Doe 1 would go into defendant's

classroom to talk or get help on homework because his friends were there, and Doe 1 considered defendant "like a cool—a cool teacher."

Doe 1 joined Camp Epic in December 2012. He estimated he went to about 30 camp events. He went on overnight camping trips to Napa, Yosemite, Bear Paw, and Mt. Diablo. At camp, defendant's nickname was Kenai, which came from a Disney movie, "Brother Bear." Doe 1 understood defendant's nickname meant he was like a brother to all the campers. Defendant told the kids they should not refer to him as a teacher; at camp, he was a brother and mentor. Doe 1's nickname at camp was Pluto, after Mickey Mouse's dog, and he got the name because he was "the follower," and he followed his best friend, Doe 2.

Doe 1 participated in his first Camp Epic camping trip in December 2012. Everyone got there in defendant's bus. The campers did a "truth activity" in which they blindfolded each other and were led up a hill "to talk about [their] truths," which involved discussing personal matters "to get to know each other better" and "get a better bond going." It was understood that what was shared in the truth-telling exercise would not be shared outside of camp.

Doe 1 had heard there was an initiation at camp where defendant "farts on your face." But Doe 1 had a different type of initiation. He was in the campsite's bathroom early in the morning taking a shower alone. He had a towel around his waist when, out of nowhere, the towel was yanked away, and he was left naked. He looked around and saw defendant in the bathroom and Doe 2 at the door.[2]

[2] Doe 2 testified that it was defendant who snatched the towel from Doe 1. Doe 2 was scared by this incident.

On his first camping trip, Doe 1 slept in a tent with defendant and Doe 2. Defendant was in the middle with Doe 1 and Doe 2 on either side of him. After that first trip, Doe 1 and Doe 2 always slept in defendant's tent. On a later trip, they asked for a different tent assignment, but defendant "got angry or got upset that we didn't want to sleep with him," and they never got different tent assignments. Doe 1 testified, "We got to sleep with Guinto." Doe 1 never asked to sleep in another tent after that request was denied. Doe 2 was at every camping trip Doe 1 attended except Doe 1's last trip.

On Doe 1's first camping trip, defendant put his hand on Doe 1's penis while they were together in the tent with Doe 2. Doe 1 testified how this came about. It was late at night, and Doe 1 heard things going on with Doe 2 and heard Doe 2 say stop. Doe 1 couldn't see what was happening, but he heard Doe 2 say, "I'm going to tell my mom."

As Doe 1 explained, "[S]omething was going on at night, and it was with my best friend (John Doe 2). [¶] And then I heard him like moving around and like—like saying things, but I didn't really understand. And then I heard like, . . . 'Stop' . . . ." Then "he stopped, and then I was . . . thinking like, you know, whatever is going on, it shouldn't happen to my best friend. It should just happen to me. [¶] So I took initiative and protecting [*sic*] my best friend."

Soon after Doe 1 heard Doe 2 say stop, defendant put his hand on Doe 1's penis. Defendant reached inside Doe 1's underwear and touched Doe 1 skin to skin. Defendant used his hand and "was masturbating" Doe 1. The first time defendant touched Doe 1's penis, "it felt weird" to Doe 1. "But," he testified, "I knew I was doing good by protecting my best friend. Cuz' after that, it never happened to him ever again. Or that's what I assumed . . . .

And pretty much I saved—or I would like to say I saved most of the people in the camp from that happening."

Defendant touched Doe 1's penis around three times on his first camping trip. After that, "most of the time [something would happen] every single night" during Camp Epic camping trips. Doe 1 testified, "Well, it was almost, like most of them, he would do it to me, or he would masturbate me, and then—and then he would be like, 'Oh it's my turn.' So I would do it."

Defendant touched Doe 1's penis "most of the time in every single camp," although at trial Doe 1 could remember only certain "major" camping trips. He estimated defendant touched his penis around 30 times. Doe 1 masturbated defendant and defendant ejaculated more than once. Doe 1 estimated he masturbated defendant around 12 times. They would ejaculate into a towel or sleeping bag.

At Doe 1's second to last Camp Epic camping trip, defendant talked about watching porn. Doe 1 responded that they could watch at midnight, but he was joking. Defendant then woke him up in the tent at midnight and showed him "teacher with teacher" or "teacher and student" pornography on his iPad. While Doe 1 watched porn, defendant started masturbating Doe 1 with his hands and then gave him oral sex ("he sucked my penis"). Defendant expected Doe 1 to reciprocate, but Doe 1 said he was tired. Defendant became upset, and the next day, defendant ignored Doe 1.

At the last camping trip he attended, Doe 1 orally copulated defendant. Doe 1 explained he did it because defendant was upset at him for not giving him oral sex during the previous camping trip, and Doe 1 "felt guilty for not doing it, or he made me feel guilty." Doe 1 testified, "And he was really upset with me. So I had to make it up to him." Doe 1 gave defendant "oral pleasure," which ended with defendant's "sperm coming out into [Doe 1's]

mouth." The next morning, defendant told Doe 1 stories about college, suggesting "doing different sex acts." Defendant pulled his own pants down and got on top of Doe 1. Defendant tried to insert Doe 1's "penis inside his . . . butt," but defendant said it wasn't going to work because they needed lubricant.

Doe 1 testified he felt guilty for not orally copulating defendant at the previous camp because "he started ignoring me a little bit. And I felt—I felt kind of like upset the fact [*sic*] that I like, you know, I guess a brother didn't want to talk to me."

Doe 1 didn't tell anyone what happened at camp because he "was afraid to." He didn't know what people would think of him if they found out and also, "there was this motto that we have where it's kind of like the Vegas rule, where whatever happens in the camp stays in the camp." At the first camping trip, defendant said, "Don't tell your parents" and told Doe 1 not to tell anyone about what happened at night in the tents. Defendant said not to tell other campers because they would tell on him. Doe 1 was confused when defendant told him not to tell anyone. Doe 1 testified he didn't know why he didn't tell anyone about defendant's conduct sooner, "but I know that, I guess, he confused us or manipulated us to like be confused, to not say anything. Or like to have a feeling of brotherhood. And basically like if we tell—tell someone, like we're basically losing someone near us, like someone who cares about us and everything. [¶] And I guess that gave us like the feeling of like . . . [we're] putting like one of our best friends away."

Doe 1 described defendant as caring and supportive and like a role model, and he did not want to get defendant in trouble. It "wasn't that hard" for defendant to make Doe 1 feel guilty because Doe 1 would feel like he "let . . . a mentor figure down." There were times when defendant would get

"upset and disappointed," such as when Doe 1 wanted to sleep in a different tent. Defendant yelled one time when Doe 1 promised to sit in the front seat of the bus with defendant to keep him company while defendant drove, but then Doe 1 forgot and sat in the back of the bus.

Doe 1 told a school administrator that there was a "three-strikes and you are out rule" at camp, and Doe 1 already had one strike. He felt he could not tell anyone about defendant touching his private parts because he would be dropped from camp. Doe 1 also thought he would be expelled or suspended from school because defendant was a teacher.

John Doe 2

Doe 2 started sixth grade at Making Waves Academy in 2012 when he was 11 years old. Defendant was his math and science teacher.[3]

Doe 2's friend, victim John Doe 11, and defendant told Doe 2 about Camp Epic, and Doe 2 joined the camp after about three months in defendant's class. Doe 2 recalled going on camping trips to Lake Tahoe, Yosemite, Napa, Bear Paw, Mt. Diablo, and San Jose.

For Doe 2's birthday, he went on a trip with just defendant and victim John Doe 12. Defendant took them to a Boy Scout store, the Jelly Belly factory, and Chevy's and took them GoKarting. They were supposed to go camping in Napa (and that is what Doe 2 told his parents he was going to do), but they went to defendant's parents' house in Vallejo instead. They watched a movie, and Doe 2 and John Doe 12 slept on the floor while defendant slept in his bed. At some point, defendant gave Doe 2 pajamas and told him that he had the same pajamas, so they "were going to be matching now." As far as Doe 2 knew, defendant did not give anyone else pajamas.

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[3] Doe 2 had two teachers in sixth grade; the other teacher taught social studies and English language arts.

Defendant would ask Doe 2 to sit on his lap for pictures, and at trial, Doe 2 identified a photograph showing him sitting in defendant's lap at defendant's desk in his classroom. Doe 2 thought it was weird, but he didn't want to get defendant mad, so he did it. Doe 2 would go after school or during lunch to defendant's classroom, and "then sometimes he would hug [Doe 2] and just kiss [him] on the cheek for no reason." Doe 2 felt like he got special treatment compared to other Camp Epic campers. He testified defendant would "treat me good by buying me things that I would want, or just inviting me to go places with him."

Doe 2 went on about 10 camping trips with defendant. At camp, defendant would "cup check" campers, which Doe 2 explained was making "a fist and you hit the other person's private parts." Defendant would do this to "[p]retty much every" camper, and he did it to Doe 2 about 10 times. Doe 2 found cup checking embarrassing and painful, but he would do it to other campers, too, because defendant made it "sort of a tradition." Defendant also pantsed Doe 2 (pulled down his pants) at camp.

Doe 2 recalled that on Doe 1's first camping trip, which was called Winter Camp, defendant and Doe 1 talked about ejaculating. On this camping trip, Doe 2 woke up in the middle of the night with defendant's hand on his penis and defendant "trying to masturbate" him. Doe 2 was shocked and scared. He got up and went to the bathroom. During Winter Camp, defendant talked to Doe 2 about jacking off and how it was normal; he told Doe 2 "this is a guy thing everyone does it. Can I do it to you?" Doe 2 "thought it was weird" and said no. Defendant got mad.

At a subsequent snow training camp, defendant had his hands on Doe 1's penis and "was ejaculating him." Doe 2 knew what was happening because "they would always be doing this at night" and Doe 2 would see

defendant's "hand moving up and down." On other trips, defendant would watch pornography on his iPad or ask Doe 2 if he wanted defendant to jack him off. Doe 2 testified that he did not tell defendant not to touch Doe 1 because he "would think that [Doe 1] maybe had liked it."

Defendant touched Doe 2's penis again at a camping trip at Bear Paw. Defendant tried to grab his penis, and Doe 2 slapped his hand and told him to stop. Defendant touched Doe 2's penis two different nights during this trip. On the second night, defendant "was masturbating" Doe 2.

Defendant touched Doe 2's penis again during a camping trip in Yosemite.

Doe 2 testified defendant either masturbated or tried to masturbate him three or four times. He did not know at the time that it was wrong for an adult to touch his private parts like that. Doe 2 explained, "[S]ince he was my teacher and supposed to be my counselor, I thought what he would say is right. That he knows what he's saying."

Doe 2 confirmed Doe 1's testimony that defendant was called Kenai based on the movie "Brother Bear" and that a camp rule was "Whatever happens at camp, stays at camp." Doe 2 did not tell anyone what happened at camp because "Mr. Guinto would be mad at us and, like, ignore us sometimes." Doe 2 remembered a time defendant ignored him. This "made [Doe 2] sad" and "confused" "[b]ecause he was leaving [Doe 2] out of . . . things" and avoiding him.

John Doe 7

Defendant was born in 1981, and he was 29 and 30 years old during the 2012-2013 school year at Making Waves Academy when he committed most of the offenses against young campers. Defendant's conduct with John Doe 7

(Doe 7), however, occurred around 10 years earlier, when defendant was 19 or 20 years old.

Doe 7 was born in 1989, and he lived in Vacaville with his family through eighth grade. Doe 7 is now openly gay and knew he was gay by the time he was in sixth grade, but he did not tell his friends or family back then. Instead, when he was around 12 years old, Doe 7 would visit "M for M" (male for male) chat rooms on the internet to explore his sexuality, and he only shared that he was gay in chat rooms with people he did not know in person.

Doe 7 met defendant through an internet chat room "GAM for GAM" (gay Asian male for gay Asian male). Doe 7 always listed his "ASL" (age, sex, location) in the chat rooms, and gave his real age of 12. Defendant identified himself as 19 or 20 years old and from Vallejo. Defendant and Doe 7 traded pictures, and defendant wanted to hang out. Doe 7 thought defendant was nice and friendly and developed a crush on him. They made a plan to meet.

The first time they met, Doe 7 sneaked out of his house at night after his parents were asleep while defendant waited for him in his car down the street. Defendant drove Doe 7 to a park near Doe 7's house, and he kissed and orally copulated Doe 7 in the car. Doe 7 was in seventh grade, and defendant already knew his age when he made the plan to meet because he had commented on how young Doe 7 was during their internet chats.

Doe 7 would sneak out and meet defendant a couple times a month for a couple months. Defendant would drive Doe 7 to various places; Doe 7 recalled parking at a park near his house and at another park near where defendant lived in Vallejo. Every time they met, defendant engaged in kissing, oral sex, and masturbation.

Defendant came up with a plan for him to be Doe 7's ROTC mentor, so they could spend time together without sneaking around. Doe 7's parents

signed forms to allow defendant to act as Doe 7's mentor. But it was never the plan that defendant would actually act as Doe 7's ROTC mentor. Instead, defendant would pick up Doe 7 in his car, and they would spend the weekend at defendant's dorm. This happened around two times. They had anal sex in the dorm. In addition to the weekend visits, after Doe 7's parents consented to the sham mentorship, defendant was able to openly pick up Doe 7 from his house, and this happened about four times.

At some point, defendant told Doe 7 that he had talked to a couple of friends about him and they didn't approve, so defendant had to stop seeing him. Doe 7 was "devastated" and "heartbroken" at the time. Doe 7 didn't think anything was wrong with defendant's conduct. But later when he reached defendant's age, he thought he could never date a middle schooler and realized what had happened was not right.

DISCUSSION

A. *Sufficiency of the Evidence of Aggravated Lewd Conduct*

Under section 288, subdivision (a), "a person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years."

Under subdivision (b) of section 288 (§ 288(b)), the offense is aggravated, and subject to a punishment of five, eight or 10 years in prison, when the perpetrator commits the offense "by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person."

Defendant was found guilty of 17 counts of aggravated lewd conduct with Doe 1, and 5 counts of aggravated lewd conduct with Doe 2.[4] Defendant argues on appeal that he was wrongly convicted of these crimes because there was insufficient "evidence of force."

The standard of review for a claim for sufficiency of the evidence is a familiar one: "we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Jennings* (2010) 50 Cal.4th 616, 638–639.)

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[4] The jury found defendant guilty as charged of counts 1, 2, 6, 7, 11, 12, 15-18, 21, 23, 24, and 28-31, violations of section 288(b) against Doe 1. The jury found defendant guilty of counts 4, 5, 8, 9, and 13, violations of section 288(b) against Doe 2. The jury could not reach a verdict on three counts of aggravated lewd conduct with Doe 2 (counts 14, 19, and 20). On appeal, defendant asserts he was wrongly convicted of 25 counts of aggravated lewd conduct with a child and the Attorney General responds that substantial evidence supports 25 counts, but defendant was convicted of 22 counts of violation of section 288(b).

Although defendant claims there was insufficient evidence of "force" to support his convictions, the more relevant question appears to be whether there was sufficient evidence to support a finding that defendant used duress. Recall lewd conduct is aggravated if committed "by use of force, violence, *duress*, menace, or fear of immediate and unlawful bodily injury on the victim or another person." (§ 288(b), italics added.)

Our Supreme Court has explained that "duress" "as used in section 288(b)(1), means ' "a direct or implied threat of force, violence, danger, *hardship* or retribution sufficient to coerce *a reasonable person of ordinary susceptibilities* to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted." ' " (*People v. Soto* (2011) 51 Cal.4th 229, 246 (*Soto*).) The totality of the circumstances, including the age of the victim and the victim's relationship to defendant, are to be considered in determining whether the defendant used duress for purposes of section 288(b). (*People v. Veale* (2008) 160 Cal.App.4th 40, 46 (*Veale*); accord CALCRIM No. 1111 ["When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the child and (his/her) relationship to the defendant"].) "[C]onsent of the victim is not a defense to the crime of aggravated lewd conduct on a child under age 14." (*Soto, supra,* 51 Cal.4th at p. 248.)

"[D]uress involves psychological coercion." (*People v. Senior* (1992) 3 Cal.App.4th 765, 775 (*Senior*).) In *Senior*, defendant Senior sexually abused his teenaged daughter.[5] (*Id.* at p. 771.) The Court of Appeal found sufficient

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[5] The victim in *Senior* was 13 and 14 years old when her father sexually abused her, and section 288(b) did not apply to the bulk of Senior's conduct. (*Senior*, *supra*, 3 Cal.App.4th at pp. 770–771.) The case is nonetheless relevant because Senior was convicted of forcible sexual penetration (§ 289, subd. (a)(1)) by means of duress. (*Senior*, *supra*, at p. 769.) The definition of

evidence of duress citing, among other things, that Senior "was [the victim's] father and an authority figure to her" and that he warned the victim "after the first molestation that to talk about it could result in divorce." (*Id.* at p. 775.) Regarding the threat of divorce if the victim told, the court explained, "In our view such a warning also implied jeopardy to the family unit if she failed to submit to future molestation. . . . A simple warning to a child not to report a molestation reasonably implies the child should not otherwise protest or resist the sexual imposition." (*Ibid.*)[6]

In *Veale*, the defendant Veale married the victim's mother and began molesting the victim when she was six or seven years old. (*Veale*, *supra*, 160 Cal.App.4th at p. 43.) The victim testified that she did not tell her mother because she was afraid and thought her mother would not believe her. She was also afraid Veale would hurt her or something would happen to her or her mother if she told, although Veale never said that. After being convicted of aggravated lewd conduct, Veale argued on appeal there was insufficient evidence of force or duress. (*Id.* at pp. 44–45) The Court of Appeal found

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duress for purposes of aggravated lewd conduct, which we have quoted from *Soto*, is also used for the offense of forcible sexual penetration as well as other sexual offenses. (See *People v. Leal* (2004) 33 Cal.4th 999, 1004–1005 [citing cases that use the section 288(b) definition of duress for other sex crimes]); CALCRIM No. 1045 [stating elements of duress for violation of section 289].)

[6] On threats to the family unit, a different appellate court has observed, "A threat to a child of adverse consequences, such as suggesting the child will be breaking up the family or marriage if she reports or fails to acquiesce in the molestation, may constitute a threat of retribution and may be sufficient to establish duress, particularly if the child is young and the defendant is her parent. We also note that such a threat also represents a defendant's attempt to isolate the victim and increase or maintain her vulnerability to his assaults." (*People v. Cochran* (2002) 103 Cal.App.4th 8, 15, disapproved on another point by *Soto*, *supra*, 51 Cal.4th at p. 248, fn. 12.)

sufficient evidence of duress, noting Veale usually molested the victim when she was alone in a bedroom, on at least one occasion the bedroom door was locked, and as her stepfather, Veale was "an authority figure in the household." (*Id.* at p. 47.) The court concluded, "[a] reasonable inference could be made that defendant made an implied threat sufficient to support a finding of duress" (even though no actual threat was made) and further concluded that the evidence recounted together with the disparity between the victim and Veale in age and size supported a finding of duress. (*Ibid.*)

In another case, the victim was the defendant's "slightly mentally retarded" 14-year-old stepdaughter. (*People v. Bergschneider* (1989) 211 Cal.App.3d 144, 149–150, disapproved on another point by *People v. Griffin* (2004) 33 Cal.4th 1015, 1028.) Defendant Bergschneider threatened the victim with restriction (meaning she would not be allowed to go anywhere) if she did not have sex with him. The victim agreed, and Bergschneider would regularly orally copulate and have sex with the victim. (*Bergschneider* at p. 150.) The Court of Appeal found sufficient evidence of duress to support Bergschneider's conviction of oral copulation by means of force or duress, concluding, "the threats of restriction are sufficient to allow the jury to conclude that [Bergschneider] accomplished the charged act of oral copulation with [the victim]—a 14-year-old of limited mental capability—by means of duress. The threatened restriction constitutes 'hardship or retribution' . . . . It was for the jury to determine whether a reasonable adolescent in [the victim]'s position would have been coerced." (*Id.* at p. 154.)[7]

[7] Forcible oral copulation, the crime at issue in *Bergschneider*, requires the act be accomplished "by means of force, violence, *duress*, menace, or fear of immediate and unlawful bodily injury on the victim or another person" (§ 287, subd. (c)(2)(A), italics added, formerly § 288a, subd. (c)), and the court

These cases demonstrate there was sufficient evidence to support a finding of duress here. Although defendant was not a parent or step-parent, he was in a position of authority as a teacher at the school Doe 1 and Doe 2 attended and as the big "brother" of Camp Epic. As his math and science teacher, defendant was one of Doe 2's two teachers in sixth grade, and he presumably determined about half of Doe 2's grades. The Attorney General points out that, as the leader of Camp Epic, defendant obtained permission slips from the victims' parents, and during camping trips, he had "in loco parentis" authority, which he could use "to control the boys' behavior once in camp, as the boys had to rely on him to bring them back home." Defendant told Doe 1 not to tell his parents or anyone what happened in the tent and told all campers that "whatever happens in the camp stays in the camp." "A simple warning to a child not to report a molestation reasonably implies the child should not otherwise protest or resist the sexual imposition." (*Senior*, *supra*, 3 Cal.App.4th at p. 775.) Doe 1 was afraid he would be dropped from camp or even suspended or expelled from school if he told anyone what defendant did, and it may reasonably be inferred that defendant made implied threats of such consequences. (See *Veale*, *supra*, 160 Cal.App.4th at p. 47.) Being dropped from camp or punished at school may constitute a hardship or retribution. (Cf. *People v. Bergschneider, supra*, 211 Cal.App.3d at p. 154 [placing a 14-year-old girl on "restriction" was a hardship or retribution].) Further, Doe 1 and Doe 2 both testified that when defendant was upset or mad at them, he ignored them. Doe 2 was "sad" and felt left out of things when this happened. When Doe 1 did not orally copulate defendant, defendant made Doe 1 feel guilty, and Doe 1 was upset that "a brother didn't

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used the definition of duress that applies to aggravated lewd conduct. (*Bergschneider*, *supra*, 211 Cal.App.3d at p. 154.)

want to talk to me." Given the feelings of trust and brotherhood defendant encouraged with Camp Epic campers, his implied threats to withhold that brotherhood could also constitute hardship or retribution to Doe 1 and Doe 2, who had come to view defendant as a brother. (Cf. *Senior*, *supra*, 3 Cal.App.4th at p. 775 [a warning that "implied jeopardy to the family unit" contributed to a finding of duress].) In sum, there was sufficient evidence for the jury to find that defendant used duress to commit lewd conduct with Doe 1 and Doe 2.

Defendant takes the position Doe 1's testimony that he was "manipulated" and "confused" by defendant and that he felt if he told on defendant, he would lose "someone near [to him]" and it would be like "putting . . . one of our best friends away" is irrelevant. Defendant argues Doe 1's perceptions are "not attributable to any objective threat or intimidation on [his] part." We disagree. Defendant specifically said not to tell other campers what happened in the tent because other campers would tell on him. Implicit in this warning was the understanding that defendant would get in trouble if Doe 1 told anyone what defendant was doing. (See *People v. Cochran*, *supra*, 103 Cal.App.4th at p. 15 [evidence that the defendant "told [the victim] not to tell anyone because he would get in trouble and could go to jail" supported a finding of duress].) And the victims' fear of losing defendant's "brotherhood" and attention was not unfounded; it was based on defendant's own conduct. Defendant ignored them when he was displeased with them, leaving Doe 2 feeling sad and left out and Doe 1 feeling guilty and like he let a mentor figure down. Defendant argues the prosecutor never identified any statement on his part that threatened a particular hardship, but threats can be implied. (*Soto*, *supra*, 51 Cal.4th at p. 246.) The victims' stated fears together with defendant's conduct and his positions of

authority (leader of Camp Epic and teacher at their middle school) provided sufficient support for the reasonable inference that defendant made implied threats in this case.

B. *Sufficiency of the Evidence of Kidnapping For Child Molestation*

Kidnapping for child molestation, a type of kidnapping in violation of section 207, is defined as follows: "Every person, who for the purpose of committing any act defined in Section 288 [lewd or lascivious conduct, see part A, *ante*], hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any child under the age of 14 years to go out of this country, state, or county, or into another part of the same county, is guilty of kidnapping." (§ 207, subd. (b) (§ 207(b)).)

The jury found defendant guilty of 22 counts of kidnapping for child molestation—five counts related to Doe 1, five counts related to Doe 2, and 12 counts related to Doe 7.

Defendant contends his conduct did not constitute any of the kinds of conduct proscribed by the statute. The Attorney General responds there was substantial evidence that defendant enticed Doe 1 and Doe 2 to go out of the county with promises of camp activities and that he "repeatedly lured [Doe 7] into his car for sex in nearby and distant parks in the middle of the night." We agree with the Attorney General.

Defendant, relying on the new shorter Oxford English Dictionary, asserts the word "entice" means " 'Incite (to a course of action)' " or " 'persuade or attract by the offer of pleasure or advantage.' " According to Merriam-Webster, entice means "to attract artfully or adroitly or by arousing hope or desire: TEMPT." (Merriam-Webster Dict. Online, <https://www.merriam-webster.com/dictionary/entice> [as of April 2020].) A case from 1930 defines the term "entice" as used in a different statute as "to

lure, induce, tempt, incite, or persuade one to do a thing." (*Rogers v. Haines* (1930) 104 Cal.App. 191, 195.) Using any of these definitions, we are satisfied the evidence was sufficient to show defendant enticed the victims to go to another county or another part of the same county in this case. As to Doe 1 and Doe 2, defendant persuaded them to attend camping trips with presentations on Camp Epic at school assemblies and camp paraphernalia displayed in his classroom. While Doe 2 was his math and science student, defendant talked to Doe 2 about the camp and told him it was fun. When Doe 1 expressed interest in Camp Epic, defendant encouraged him to complete the application process, and Doe 1 felt "excited." As to Doe 7, defendant contacted him online in a chat room, and after they had been chatting for a while, defendant told Doe 7 he wanted to hang out with him in person. As to all of the victims, they would not have gone to places away from their parents where they could be sexually abused (in a tent at campsites far from home, in defendant's car parked next to a park in the middle of the night, in defendant's dorm room), had defendant not done something to persuade or tempt them to go there.

Next defendant contends the kidnapping convictions related to Doe 1 and Doe 2 must be reversed because there was no evidence of "asportation," that is, movement of the victim. (See *People v. Ortiz* (2002) 101 Cal.App.4th 410, 414 ["For simple kidnapping (§ 207), the kidnapper's physical movement of the victim must be 'substantial in character'—the so-called asportation element"].)

For kidnapping in violation of section 207, subdivision (a), a person commits the offense if he "forcibly, or by any other means of instilling fear" takes a victim (of any age) and "*carries* the person into another country, state, or county, or into another part of the same county." (Italics added.)

Kidnapping for child molestation in violation of section 207(b) has a different asportation element. As we have seen, a person commits this crime if he "persuades [or] entices" (or hires, decoys, etc.) a victim under age of 14 "*to go* out of this country, state, or county, or into another part of the same county" for the purpose of committing a lewd act. (§ 207(b), italics added.)

Defendant argues evidence of asportation is lacking for the kidnapping convictions involving Doe 1 and Doe 2 because the record does not always establish how they got to the various campsites where he molested them. But defendant fails to recognize the difference between kidnapping for child molestation and forcible kidnapping. Only forcible kidnapping in violation section 207, subdivision (a), requires that the defendant "carr[y]" the victim. Kidnapping for child molestation, which defendant was convicted of, only requires that the perpetrator persuade or entice the victim to go somewhere. Thus, it would not matter if, as defendant speculates, Doe 1 and Doe 2 were driven to the campsites by their parents or the parents of their friends so long as defendant persuaded or enticed the victims to go to those campsites for the purpose of committing lewd acts; the asportation element was satisfied in this case because defendant persuaded or enticed Doe 1 and Doe 2 to go to various campsites for the purpose of committing lewd acts.

C. *Restitution*

The People asked for restitution of $1 million for each victim for noneconomic losses. At sentencing, the trial court heard four hours of impact statements from victims and their relatives. The trial court awarded each Doe victim $1 million.[8]

[8] Defendant also received a sentence of over 900 years to life in prison. The trial court imposed a determinate term of more than 70 years in prison, followed by an indeterminate term of 855 years to life. Defendant challenges

The court explained its reasoning as follows: "As to the damages, the emotional pain and suffering that these survivors endured was revealed during the course of the trial. And in a small measure, repeated a little bit here today.

"The Court has observed the very deep-seated scars that are left on these survivors. And it's clear to me, even though each and every one of them are determined to move on, and I'm hopeful that they will move on, there is no question that they have suffered a severe trauma, and exactly how that will play out, individually, for each of them in the years to come is not known.

"And I don't have the powers to know that. But I do know that victims of abuse typically experience a number of different problems relating to self-esteem, fear, anger, depression, mood swings, nightmares, shame, and many of the other things that were talked about here today, and that the families themselves identified.

"It is somewhat arbitrary for the Court to say that it has any ability to scientifically award an accurate amount to compensate the victims for the damages that they have sustained. And I think the reality is that regardless of what number the Court selects as being the reasonable representation of this noneconomic loss, the fact of the matter is that these survivors are not going to see that money, and perhaps only cents on the dollar, in that sense of the word.

"It is, however, important at least from the judicial system's standpoint, and from my standpoint, for these survivors to see that the Court is aware of, acknowledges, and can, in some small way compensate them for the suffering that they have endured, not just through the trauma that they

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the sufficiency of the evidence of many of his convictions, but he does not otherwise challenge the length of his sentence on appeal.

were subjected to at the defendant's hands, but also from having to relive that experience, coming to court.

"And listening to them recounting that, showed to me just how hard that was for them. And then to come here to court to express your views, and at that point in time, instead of receiving a long . . . overdue, and much hoped for apology from the defendant, instead you received what you did.[9]

"It seems to me that in light of all those things, the Court would be hard pressed to find fault with the People's request for restitution to be in the amount of $1 million each. And that's the amount that the Court thinks adequately reflects the severity of the abuse that each was subjected to.

"And while I could have gone through each of the survivors, and tweaked that number upwards and downwards by tens, or perhaps $50,000 here and there, it seems to me a much more just result to make it across the board, given the behavior that they were subjected to. And so that is the noneconomic loss that I'm ordering per survivor for each of the John Does in the case for which there were verdicts."

Defendant contends the trial court's restitution awards were arbitrary and must be reversed. We disagree.

Generally, when "a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other

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[9] Defendant spoke at sentencing. He told the court he had been "prejudicially tried and wrongfully convicted" and concluded his statement with a prayer that included the phrases, "*May those who rejoice at my troubles be humiliated and disgraced. May those who triumph over me be covered with shame and dishonor, but give great joy to those who came to my defense*."

showing to the court." (§ 1202.4, subd. (f).) A restitution order "shall be of a dollar amount that is sufficient to fully reimburse the victim" and includes "[n]oneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288, 288.5, or 288.7." (*Id.*, subd. (f)(3)(F).)

In the context of restitution for *economic* loss, our high court has explained, "[W]e review the trial court's restitution order for abuse of discretion. [Citations.] The abuse of discretion standard is 'deferential,' but it 'is not empty.' [Citation.] '[I]t asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts [citations].' [Citation.] Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim's economic loss. To facilitate appellate review of the trial court's restitution order, the trial court must take care to make a record of the restitution hearing, analyze the evidence presented, and make a clear statement of the calculation method used and how that method justifies the amount ordered." (*People v. Giordano* (2007) 42 Cal.4th 644, 663–664, fn. omitted (*Giordano*).)

In *People v. Valenti* (2016) 243 Cal.App.4th 1140, the Court of Appeal applied the *Giordano* standard to review of noneconomic losses. "Section 1202.4 does not provide guidelines for evaluating a child victim's noneconomic damages for sexual abuse. Unlike economic damages, which encompass 'objectively verifiable monetary losses' (Civ. Code, § 1431.2, subd. (b)(1)), noneconomic damages compensate the victim for 'subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.' (Civ. Code, § 1431.2,

subd. (b)(2); [citation].) The trial court has broad discretion to choose a method for calculating the amount of restitution, but it must employ a procedure that is rationally designed to determine the victim's losses. (*Giordano*, *supra*, 42 Cal.4th at pp. 663-664.) The court 'must demonstrate a rational basis for its award, and ensure that the record is sufficient to permit meaningful review. The burden is on the party seeking restitution to provide an adequate factual basis for the claim." (*Valenti*, at p. 1182.)

The *Valenti* court reversed the lower court's restitution awards, noting "the court in this case did not find facts, cite reliable evidence, or even explain how it arrived at the amount of restitution awarded to each victim" and "[t]here was no evidence, either through direct testimony or victim-impact statements, that the children suffered nightmares or flashbacks, that they were having trouble in school or problems making friends, that they had considered harming themselves or others, or that they had sought or received counseling in any form." (243 Cal.App.4th at p. 1183.) "In fact," the court noted, the families of the three victims "were relieved that their sons had not 'actually' been abused." (*Ibid*.) The mother of one of the victims " 'thanked God her son (victim) did not sustain actual child abuse.' " (*Id*. at p. 1182.) Another victim was reportedly " 'doing fine,' " and his mother believed the defendant never sexually abused her son and he had " 'moved on from this.' " (*Id*. at pp. 1182–1183.) The third victim's mother reported that "her son was 'excellent.' " (*Id*. at p. 1183.)

Here, in contrast, there was evidence from the victim impact statements of the harm suffered, and the trial court cited this evidence, the testimony at trial, and its understanding of the problems victims of sexual abuse typically suffer. There was certainly no evidence in this case that the victims or their families believed the victims had not " 'actually' " been

sexually abused or that the victims were " 'doing fine.' " To the contrary, parents and siblings reported that defendant's crimes had caused the victims and their families lasting damage.

A reviewing court will "affirm a restitution order for noneconomic damages that does not, at first blush, shock the conscience or suggest passion, prejudice or corruption on the part of the trial court." (*People v. Smith* (2011) 198 Cal.App.4th 415, 436.) We cannot say the restitution awards in this case shock the conscience. (Cf. *People v. Lehman* (2016) 247 Cal.App.4th 795, 802-803 [$900,000 restitution award for sexual abuse victim did not shock the conscious].) Accordingly, we will not disturb the restitution awards.

DISPOSITION

The judgment is affirmed.

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Miller, J.

We concur:

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Kline, P.J.

_____
Stewart, J.

A151356, *People v. Guinto*